**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVISION APPLICATION NO. 8 OF 20004.**

Shri Chandrashekhar D. Chavan,
Dy. Manager (Commercial),
Tide Water Oil Company (India) Ltd.,
having office at CTS, 90,
Govandi, Deonar, Mumbai-88. ... Petitioner.

Versus

1. S T A T E.

2. Sameer Kamat,
s/o Bhiku, r/o Manaswada,
H. No. 567, Kundai, Ponda, Goa. .... Respondents.

Shri Nitin Sardessai, Advocate for the Petitioner.

Shri S.N. Sardessai, Public Prosecutor for the Respondent No.1.

CORAM: V. M. KANADE, J.

DATE: 6th JULY, 2005.

**ORAL ORDER:**

Heard learned counsel for the petitioner.

2. The petitioner who is the original complainant had filed a complaint under Section 409 of the Indian Penal Code against Respondent No.2. The State filed a charge sheet after the investigation was completed. A charge was framed by the Trial Court. The accused pleaded not guilty to the said charge. Thereafter the prosecution adduced oral and documentary evidence. The Trial Court however acquitted the accused.

3. Admittedly the State has not preferred appeal against that order of

acquittal. The original complainant being aggrieved by the Judgment and Order of the Trial Court, has preferred this Criminal Revision Application.

4. The learned counsel, appearing on behalf of the petitioner, submits that the Trial Court has not taken into consideration the material evidence which was adduced by the prosecution and therefore this was a fit case where the Judgment and Order of the Trial Court is liable to be set aside with a direction to either re-hear the entire case or re-heard the oral arguments. The learned counsel appearing on behalf of the petitioner, has taken me through the Judgment and Order of the Trial Court and has submitted that the Trial Court has not taken into consideration the document at Exh.PW.4/A being Invoice No.2654 dated 18.2.1998 and Invoice No.3163 dated 31.3.1998. He submitted that so far as the second document is concerned, admittedly the accused had signed the said document and P.W.4 had identified the signature of the accused. He invited my attention to the finding given by the Trial Court where the Trial Court has not taken into consideration this document on the ground that the signature of the accused was not obtained on the second page of the said document. He submitted therefore that though there was specific evidence on record showing entrustment of the goods to the accused, the Trial Court has not taken this fact into consideration. He has further submitted that in the entire evidence, the oral evidence of the witnesses has not been considered. The learned counsel relied on the Judgment of the Supreme Court reported in ***K. Chinnaswamy Reddy v. State of Andhra Pradesh and another (A.I.R. 1962 S.C. 1788)*** in support of his submission.

5. It is not possible to accept the submission made by the learned counsel appearing on behalf of the petitioner. It is a settled position in law that the scope of revision filed by the original complainant is very limited and the High Court while exercising its revisional jurisdiction cannot re-appreciate the evidence which has been adduced by the prosecution and only under certain circumstances this Court can direct and remand the case either for re-trial or for re-hearing. In my view no case is made out for an order of remand. The accused was charged for an offence punishable under Section 409 of Indian Penal Code. The prosecution case as disclosed in the F.I.R. and during the trial, was that the accused was appointed as a Commission Agent for the purpose of marketing the complainant's goods in Goa and between the years 1997 to 23.7.2001, the Company had entrusted material worth Rs.6,56,291/- to the accused. It is alleged that though these goods were sold by the accused, he did not pay the sale proceeds to the Company and therefore had committed an offence of criminal breach of trust.

6. The first essential ingredient which is required to be proved by the prosecution in the case of criminal breach of trust is that of entrustment of property. The prosecution, in support of its case had relied on various documents which were Invoices in support of its case that the goods were entrusted to the accused. The Trial Court however after examining each and every document which was produced and proved through these witnesses, had come to the conclusion that entrustment of property was not proved as none of the documents were signed by the accused. Document dated 31.3.1998 is also a document of invoice drawn in favour of the accused, though it had a

signature on the first page of the document, the second page of the document was not signed by the accused. The Trial Court came to the conclusion that since the second page was not signed, it created a doubt as to whether in fact the goods were received by the accused or not and therefore discarded this document. In my view there is no infirmity in the order passed by the Trial Court and the Trial Court has considered the documentary evidence on the question of entrustment of property. This Court while exercising its revisional jurisdiction cannot re-appreciate the evidence on record. No case is made out for interference in the Order of the Trial Court.

7. Hence Criminal Revision Application is rejected.

**V. M . KANADE, J.**

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